

OGC Has Reviewed

OGC 68-2534

27 December 1968

MEMORANDUM FOR: Chief, Logistics Reference Room, OL

ATTENTION:



25X1A

SUBJECT:

Obtaining Materials and Literature on
Electronic Surveillance Products

1. This is in response to your memorandum of 25 November 1968, subject as above, requesting further guidelines from this office in view of the exchange of letters between Mr. Houston and Assistant Attorney General Fred Vinson. See also my memorandum for the record of 6 December 1968 (OGC 68-2409), copy attached.

2. In view of the exchange with the Department of Justice, it would be inappropriate for this Agency to request manufacturers to furnish by mail catalogs and other advertisements. The Agency is free however to obtain such literature by hand from suppliers and to transmit it to Headquarters other than by mail.



25X1A

Associate General Counsel

Attachment

*1/2/69 - Captain D. Abner - 2 memoranda sent
to Sally Pike 10/4/68.*

STATINTL

[redacted]
Associate General Counsel

25 November 1968

STATINTL

[redacted]
Chief, Logistics Reference Room

**Obtaining Materials and Literature on
Electronic Surveillance Products**

STATINTL

1. In view of the exchange of letters between Mr. Houston and Mr. Vinson, copies of which were given to me by [redacted] I believe another memorandum is needed from your office.

STATINTL

2. Since receiving your memorandum of 15 November, 1968 I have written one letter, at the request of WH/Log., to [redacted] requesting literature.

3. I believe the recent exchange of correspondence between our Agency and the Department of Justice changes the instructions set out in your memorandum of the 15th.

4. It would be appreciated if you would give me another memorandum, setting out the guidelines this office is to follow in regard to asking for literature from companies handling electronic surveillance products.

151
[redacted]

STATINTL

Distribution:

- Orig & 1 - Addressee
- 1 - Official (Log. Ref. Rm.)
- 1 - [redacted] AGC/OL ✓

STATINTL

6 December 1968

SUBJECT: Prohibitions on Audio Devices

2. Shipment through the mail is clearly prohibited. It is the view of the Justice representative that a purchase within a state for the purpose of transporting the device outside the state, even if no further sale or commercial aspect is intended, is interstate commerce. [REDACTED]

25X1C

25X1A

Associate General Counsel

ILLEGIB

OGC:RHL:bt

Distribution:

✓Orig. - LEGISLATION subject file

1 - RHL signer

1 - Chrono

Added:

ILLEGIB

1-C/Technical Surveillance Countermeasures Committee

1-CI Staff

1-Legislative Counsel

1-D/Security

1-TSD-

1-OGC/

ILLEGIB

25X1A

TRANSMITTAL SLIP

-DATE

~~IN~~ 25-68

TO:

AGC/OL

ROOM

Ames

REMARKS:

For your files.

M.

LO/REF. ROOM

FROM:

ROOM 1126-A

ROOM NO.

BUILDING

EXTENSION

FORM NO. 241
1 FEB 55

REPLACES FORM 36-8
WHICH MAY BE USED.

(47)

COMMISSION FOR THE REVIEW OF FEDERAL AND
STATE LAWS RELATING TO WIRETAPPING AND ELEC-
TRONIC SURVEILLANCE

AUGUST 23, 1974.—Committed to the Committee of the Whole House on the State
of the Union and ordered to be printed

Mr. KASTENMEIER, from the Committee on the Judiciary,
submitted the following

REPORT

[To accompany H.R. 15173]

The Committee on the Judiciary, to whom was referred the bill
(H.R. 15173) to extend for one year the authority of the National
Commission for the Review of Federal and State Laws on Wiretapping
and Electronic Surveillance, and for other purposes, having considered
the same, report favorably thereon with amendment and recommend
that the bill as amended do pass.

The amendment is as follows:

Amend the title of the bill to read:

A bill to extend for one and one half years the authority of
the National Commission for the Review of Federal and State
Laws on Wiretapping and Electronic Surveillance, and for
other purposes.

PURPOSE OF THE AMENDMENT

The amendment corrects a mistake in the title of the bill by chang-
ing the title to read that the bill extends for one and one half years,
not one year, the authority of the National Commission for the Review
of Federal and State Laws on Wiretapping and Electronic
Surveillance.

PURPOSE OF THE AMENDED BILL

The purpose of the amended bill is to extend the life of the National
Commission for the Review of Federal and State Laws Relating to
Wiretapping and Electronic Surveillance. It also allows the Com-
mission to hold closed meetings by a majority vote, exempts records
and transcripts of the Commission's closed meetings from disclosure
pursuant to the Freedom of Information Act (5 U.S.C. 552), allows
the Commission to listen to tapes produced by illegal wiretaps, not-
withstanding the provisions of 18 United States Code 2515, and re-
affirms congressional intent as to the existence of the Commission.

STATEMENT

The National Commission for the Review of Federal and State Laws Relating to Wiretapping and Electronic Surveillance was authorized in the Omnibus Crime Control and Safe Streets Act of 1968 (P.L. 90-351). However, that legislation provided that the Commission was not to come into existence until six years after the effective date of the Act. This was later changed to five years (P.L. 91-644). In the Organized Crime Control Act of 1970 (P.L. 91-452), Congress repealed the Wiretap Commission and created a new National Commission on Individual Rights which was also to study wiretapping among other subjects. This Commission has never met since its public members have yet to be appointed.

The Wiretap Commission was revived in the 1970 Amendments to the Omnibus Crime Control and Safe Streets Act (P.L. 91-644). However, although it officially came into existence on June 19, 1973, selection of its members was not completed until the spring of 1974, and the organizational meeting was not held until May 9, 1974. Present law requires that the Commission terminate on June 19, 1975, giving it barely half of the originally authorized two years to complete its work. In the opinion of the Committee, this is not an adequate amount of time in which to study this important subject. Therefore, the Committee recommends approval of the present legislation extending the life of the Commission an additional year and a half, until January 19, 1977.

In addition, the bill does the following:

It allows the Commission to hold closed meetings by a majority vote. The Federal Advisory Committee Act (5 U.S.C. App. I) requires that all Federal commissions hold open meetings. This bill would except the Commission from the Advisory Committee Act so that it may examine the transcripts and logs of wiretaps while maintaining the privacy of those whose conversations have been recorded. It would also enable the Commission to maintain the confidentiality of national security wiretaps. For the same reasons it exempts records and certain meeting transcripts from the Freedom of Information Act (5 U.S.C. 552).

The bill specifically allows the Commission to listen to tapes produced by illegal wiretaps. Title 18 United States Code, section 2515 presently prohibits any agency of the Government from receiving in evidence material obtained from an illegal wiretap. The purpose of this prohibition is to prevent the substance of such evidence being used against the subject of the wiretap. However, the Commission's interest does not lie in obtaining information regarding the subject of an illegal wiretap, but in examining the nature of the wiretap itself. The Committee feels that the Commission must be authorized to listen to such material if it is to study adequately the abuses of wiretapping and electronic surveillance.

Finally, the bill restates the legislative intent expressed in the Omnibus Crime Control Act of 1970 reviving the Commission.

ESTIMATE OF COST

Pursuant to the requirements of clause 7 of Rule XIII of the Rules of the House of Representatives, the Committee estimates a Federal cost of \$500,000 based on information supplied by the Commission.

VOTES

No record votes were taken in the Committee's consideration of H.R. 15173.

• COMMITTEE RECOMMENDATIONS

After careful consideration, the Committee is of the opinion that the bill should be enacted and accordingly recommends that H.R. 15173, as amended, do pass.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3 of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman) :

OMNIBUS CRIME CONTROL AND SAFE STREETS ACT
OF 1968

* * * * *

TITLE III—WIRETAPPING AND ELECTRONIC
SURVEILLANCE

* * * * *

SEC. 804. (a) There is hereby established a National Commission for the Review of Federal and State Laws Relating to Wiretapping and Electronic Surveillance (hereinafter in this section referred to as the "Commission").

(b) The Commission shall be composed of fifteen members appointed as follows:

(A) Four appointed by the President of the Senate from Members of the Senate;

(B) Four appointed by the Speaker of the House of Representatives from Members of the House of Representatives; and

(C) Seven appointed by the President of the United States from all segments of life in the United States, including lawyers, teachers, artists, businessmen, newspapermen, jurists, policemen, and community leaders, none of whom shall be officers of the executive branch of the Government.

(c) The President of the United States shall designate a Chairman from among the members of the Commission. Any vacancy in the Commission shall not affect its powers but shall be filled in the same manner in which the original appointment was made.

(d) It shall be the duty of the Commission to conduct a comprehensive study and review of the operation of the provisions of this title, in effect on the effective date of this section, to determine the effectiveness of such provisions during the six-year period immediately following the date of their enactment.

(e) (1) Subject to such rules and regulations as may be adopted by the Commission, the Chairman shall have the power to—

(A) appoint and fix the compensation of an Executive Director, and such additional staff personnel as he deems necessary,

H.R. 1343

without regard to the provisions of title 5, United States Code, governing appointments in the competitive service, and without regard to the provisions of chapter 51 and subchapter III of chapter 53 of such title relating to classification and General Schedule pay rates, but at rates not in excess of the maximum rate for GS-18 of the General Schedule under section 5332 of such title; and

(B) procure temporary and intermittent services to the same extent as is authorized by section 3109 of title 5, United States Code, but at rates not to exceed \$100 a day for individuals.

(2) In making appointments pursuant to paragraph (1) of this subsection, the Chairman shall include among his appointment individuals determined by the Chairman to be competent social scientists, lawyers, and law enforcement officers.

(f) (1) A member of the Commission who is a Member of Congress shall serve without additional compensation, but shall be reimbursed for travel, subsistence, and other necessary expenses incurred in the performance of duties vested in the Commission.

(2) A member of the Commission from private life shall receive \$100 per diem when engaged in the actual performance of duties vested in the Commission, plus reimbursement for travel, subsistence, and other necessary expenses incurred in the performance of such duties.

(g) (1) **[The]** *Notwithstanding section 2515 of title 18, United States Code.* the Commission or any duly authorized subcommittee or member thereof may, for the purpose of carrying out the provisions of this title, hold such hearings, sit and act at such times and places, administer such oaths, and require by subpoena or otherwise the attendance and testimony of such witnesses and the production of such books, records, correspondence, memorandums, papers and documents as the Commission or such subcommittee or member may deem advisable. Any member of the Commission may administer oaths or affirmations to witnesses appearing before the Commission or before such subcommittee or member. Subpenas may be issued under the signature of the Chairman or any duly designated member of the Commission, and may be served by any person designated by the Chairman or such member.

(2) In the case of contumacy or refusal to obey a subpoena issued under subsection (1) by any person who resides, is found, or transacts business within the jurisdiction of any district court of the United States, the district court, at the request of the Chairman of the Commission, shall have jurisdiction to issue to such person an order requiring such person to appear before the Commission or a subcommittee or member thereof, there to produce evidence if so ordered, or there to give testimony touching the matter under inquiry. Any failure of any such person to obey any such order of the court may be punished by the court as a contempt thereof.

(3) The Commission shall be "an agency of the United States" under subsection (1), section 6001, title 18, United States Code for the purpose of granting immunity to witnesses.

(4) Each department, agency, and instrumentality of the executive branch of the Government, including independent agencies, is author-

ized and directed to furnish to the Commission, upon request made by the Chairman, on a reimbursable basis or otherwise, such statistical data, reports, and other information as the Commission deems necessary to carry out its functions under this title. The Chairman is further authorized to call upon the departments, agencies, and other offices of the several States, to furnish, on a reimbursable basis or otherwise, such statistical data, reports, and other information as the Commission deems necessary to carry out its functions under this title.

(5) *Whenever the Commission or any subcommittee determines by majority vote to meet in a closed session, sections 10(a) (1) and (3) and 10(b) of the Federal Advisory Committee Act (86 Stat. 770; 5 U.S.C. Appendix) shall not apply with respect to such meeting, and section 552 of title 5, United States Code, shall not apply to the records, reports, and transcripts of any such meeting.*

(h) The Commission shall make such interim reports as it deems advisable, and it shall make a final report of its findings and recommendations to the President of the United States and to the Congress within the **[two-year]** *three and one-half year* period following the effective date of this subsection. Sixty days after submission of its final report, the Commission shall cease to exist.

(i) (1) Except as provided in paragraph (2) of this subsection, any member of the Commission is exempted, with respect to his appointment, from the operation of sections 203, 205, 207, and 209 of title 18, United States Code.

(2) The exemption granted by paragraph (1) of this subsection shall not extend—

(A) to the receipt of payment of salary in connection with the appointee's Government service from any source other than the private employer of the appointee at the time of his appointment, or

(B) during the period of such appointment, to the prosecution, by any person so appointed, of any claim against the Government involving any matter with which such person, during such period, is or was directly connected by reason of such appointment.

(j) There is authorized to be appropriated such sum as may be necessary to carry out the provisions of this section.

(k) The foregoing provisions of this section shall take effect upon the expiration of the fifth year period immediately following the date of the enactment of this Act.

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